

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

BellSouth Telecommunications, Inc. Request
for Declaratory Ruling that State Commissions
May Not Regulate Broadband Internet Access
Services by Requiring BellSouth to Provide
Wholesale or Retail Broadband Services to
Competitive LEC UNE Voice Customers

WC Docket No. 03-251

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company (“PRT”), by and through its attorneys, hereby respectfully submits the following reply in response to comments filed by WorldNet Telecommunications, Inc. (“WorldNet”) in the above-referenced docket.¹ WorldNet’s Comments concern an intrastate matter that is currently pending before the Telecommunications Regulatory Board of Puerto Rico (“TRB”), and are well outside the scope of this Notice of Inquiry. Moreover, WorldNet’s Comments are rife with factual inaccuracies and misrepresentations. As a result, the Commission should afford WorldNet’s submission no weight, and decline WorldNet’s invitation to revisit well-settled principles that are not at issue in this proceeding.

I. WorldNet’s Comments Are Outside the Scope of this NOI

In the Notice of Inquiry released by the Commission, the agency sought comment on “the competitive consequences when providers bundle their legacy services with new services, or ‘tie’

¹ See Comments of WorldNet Telecommunications, Inc., WC Docket No. 03-251 (filed June 13, 2005) (“WorldNet Comments”).

such services together *such that the services are not available independent from one another to end users.*” BellSouth Telecommunications, Inc. Request for Declaratory Relief, Notice of Inquiry, WC Docket No. 03-251 at ¶ 37 (rel. Mar. 25, 2005) (emphasis added) (“NOI”). WorldNet’s Comments, however, focus on intrastate contract tariff terms and whether the Commission should require the resale of information services. In fact, WorldNet does not even address the tying issue on which the Commission requested comment.

Using contract tariff arrangements that are standard throughout the telecommunications industry, PRT developed a negotiated package of services and “won back” a large customer that had switched part of its telecommunications sourcing to WorldNet. As a result, WorldNet filed a complaint with the TRB in Puerto Rico alleging that PRT’s contract tariffs are inconsistent with federal and Commonwealth law. WorldNet Comments at 2, n.2. This proceeding is pending.

The Comments submitted by WorldNet in response to the NOI are focused solely on the contract tariff issues. There is no dispute, either in WorldNet’s comments or in the proceeding at the TRB, that all of the telecommunications services that are offered as part of discounted bundles are also separately available under PRT’s general tariffs. WorldNet’s comments are artfully drafted to suggest that it is “tying” for a provider to offer both regulated services and non-regulated services in a single, discounted bundle. *See, e.g.*, WorldNet Comments at 2-3. However, as the Commission noted in the NOI, “tying” occurs when a provider only sells one service in combination with another service. When a company bundles a set of services together that are otherwise available separately in order to offer a discounted price, this is not a tying arrangement. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418, ¶ 18 (2001) (Where services are separately available, it is not anticompetitive to

offer them together for a single, discounted price; indeed, such bundles enhance rather than restrict consumer choice).

II. WorldNet's Comments Are Rife With Inaccuracies

While the Commission should disregard WorldNet's arguments because they concern matters that are not included in the NOI, the Comments contain a number of factual misstatements and mischaracterizations that must be corrected.

First, WorldNet's claim that competition has been slow to develop in Puerto Rico is simply wrong. WorldNet cites the enterprise switching waiver petition filed by the TRB in the *Triennial Review* proceeding for the proposition that the telecommunications market in Puerto Rico is different from corresponding markets on the mainland. WorldNet Comments at 6. However, the Commission found that TRB had not adequately justified its request for a waiver of the national rules and denied this petition. In the Matter of Unbundled Access to Network Elements, 20 FCC Rcd 2533, ¶ 222 n.610 (2005) ("*Triennial Review Remand Order*"). After reviewing record evidence submitted by the TRB and by WorldNet itself, the Commission concluded that there was no basis for applying special regulatory conditions to Puerto Rico. *Id.*, ¶ 222 n.608. WorldNet's comments in this proceeding offer nothing more than a retread of the speculative concerns that the Commission rejected in the *Triennial Review Remand Order*. *Id.*, ¶ 214, n. 582.

Second, WorldNet's Comments imply that PRT is forcing customers to enter into term contracts for non-telecommunications services in order to purchase telecommunications services. *See, e.g.*, WorldNet Comments at 3. This is not true. PRT is not restricting the availability of its telecommunications services, and none of PRT's telecommunications services is "tied" to the purchase of other services. In fact, all of the telecommunications and information services offered to customers taking service under PRT's contract tariffs are also available individually.

The arrangements that WorldNet is complaining about are standard, negotiated contract tariffs, where customers agree to a contract term and minimum revenue commitment in order to receive a discounted price. A business customer not wishing to purchase bundled services from PRT or be bound to a contract term or revenue commitment may buy any or all of PRT's telecommunications services separately under the terms in PRT's tariffs. These contract tariffs provide for reasonable termination penalties and limited windows of availability, but such provisions are standard in the industry and constitute a widely accepted and wholly proper way for a carrier to (a) ensure that it receives the benefit of its bargain; and (b) avoid having to maintain a discounted service offering for an unlimited or indefinite period of time.

Third, WorldNet erroneously suggests that, in order to negotiate, PRT requires a confidentiality agreement that effectively prevents a customer from negotiating simultaneously with other service providers for the same service bundle. WorldNet Comments at 3. PRT does ask potential contract tariff customers to sign confidentiality agreements, in order to protect confidential and proprietary information that may be exchanged during the negotiation process. However, nothing in these agreements prevents the prospective customer from negotiating with other service providers at the same time at the customer negotiates with PRT.

III. The Commission Should Not Make Information Services Available for Resale

WorldNet asks the Commission to "consider requiring that incumbent LECs resell bundled service offerings in their entirety where they contain telecommunications components." WorldNet Comments at 7. As with the rest of the WorldNet's pleading, this request for relief is far a field from the subject of the NOI. WorldNet's request is thus not properly before the agency; even if the Commission elected to consider this matter, there is no record evidence to support such a proposal.

The Commission has directly considered whether the Section 251 resale obligation extends to bundles that contain non-telecommunications services and has determined unequivocally that it does not. As the FCC explained:

We are not persuaded by ATG's argument that Verizon should make its bundled offerings that include deregulated CPE [Customer Premises Equipment] and internet access available for resale. *The resale obligation clearly extends only to telecommunications services offered at retail.* See 47 C.F.R. § 51.605 (requiring an incumbent LEC to offer, on a wholesale basis, any telecommunications service that it offers to retail customers).

Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut, 16 FCC Rcd. 14147, 14166 n.93 (2001) (emphasis added) (“*Verizon Connecticut Order*”).

While WorldNet's Comments appear to concede that there is no current requirement to resell bundled service offerings composed of both telecommunications and non-telecommunications services, WorldNet Comments at 7, WorldNet does not explain why the Commission's decision in the *Verizon Connecticut Order* was mistaken, or why the agency should revisit that decision now. Indeed, WorldNet fails to cite the *Verizon Connecticut Order* at all, relying instead on a vague allegation that the Verizon/MCI and SBC/AT&T mergers will give the combined companies “an unprecedented ability to offer a wide variety of bundled service offerings that include regulated and unregulated service offerings from various affiliates.” *Id.* The purpose of the Section 251(c)(4) resale requirement, however, is to provide competitive carriers with a way to purchase *telecommunications services* at a wholesale discount from incumbent carriers. Nothing prevents WorldNet or any other CLEC from providing non-telecommunications services on its own or forming partnerships or alliances with other providers

of such services to provide a full range of telecommunications and information services. Thus, WorldNet has provided no support that such a change to the Commission's established rules is warranted.

Moreover, WorldNet has not demonstrated that the Commission has any authority to mandate that incumbent LECs provide non-telecommunications services for resale at a wholesale discount. The 1996 Act requires only that incumbent carriers "offer for resale at wholesale rates any *telecommunications service* that the carrier provides at retail." 47 U.S.C. § 251(c)(4)(A) (emphasis added). A discounted bundled service offering that contains non-telecommunications services is thus outside the scope of the Act.

IV. Conclusion

For the foregoing reasons, the Commission should disregard the Comments submitted by WorldNet and should refuse to impose resale obligations on non-telecommunications services.

Respectfully Submitted,

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